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PUC DOCKET NO. 46368
SOAH DOCKET NO. 473-17-0684

2017 FEB 15 PM 3:12

APPLICATION OF AEP TEXAS	§	
NORTH COMPANY FOR	§	PUBLIC UTILITY COMMISSION
REGULATORY APPROVALS	§	
RELATED TO THE INSTALLATION	§	OF TEXAS
OF UTILITY-SCALE BATTERY	§	
FACILITIES	§	

ORDER

This order addresses the application of AEP Texas Inc.¹ for declarations from the Commission related to utility-scale lithium-ion-battery facilities AEP proposed to install in Woodson and Paint Rock, Texas, if it obtained the necessary declarations. AEP requested “confirmation that the battery installations by [AEP] comply with Texas law and will be considered distribution assets”² The company also requested approval to apply a specific depreciation rate to the batteries,³ but the Commission excluded this issue from this docket.⁴

After hearing, the administrative law judge (ALJ) assigned to this matter issued a proposal for decision that recommended that the Commission make findings of fact and conclusions of law that AEP’s proposed installation complies with the Public Utility Regulatory Act (PURA)⁵ and Commission rules and that the batteries are properly characterized as distribution assets.⁶ For the reasons discussed in this order, the Commission determines that this case does not provide sufficient information to allow the Commission to make the declarations sought by AEP with respect to the proposed battery installations.

Further, the Commission deems it imprudent to make any declarations in this docket on the state of this record, because any such declaration could limit unnecessarily the future use of

¹ The Commission refers to the applicant in this order as AEP Texas, Inc. to reflect the merger of AEP Texas North Company and AEP Texas Central Company into their parent company, effective December 31, 2016.

² Application at 3 (Sep. 16, 2016).

³ *Id.* at 3-4.

⁴ Preliminary Order at 5 (Nov. 14, 2016).

⁵ Tex. Util. Code Ann. §§ 11.001–58.302 (West 2016 & Supp. 2017), §§ 59.001–66.016 (West 2007 & Supp. 2017) (PURA).

⁶ Proposal for Decision (Oct. 13, 2016).

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energy-storage devices in the Electric Reliability Council of Texas (ERCOT). Accordingly, the Commission dismisses this proceeding without prejudice and directs that a rulemaking project be initiated to develop the facts necessary to establish a regulatory framework that will allow for the efficient and appropriate use of energy-storage devices as well as other technologies within the limits of PURA. Consistent with its decision, the Commission does not adopt the proposal for decision issued in this matter, except to the extent it documents the procedural history and arguments of the parties.

I. Procedural History

AEP Texas filed its application on September 16, 2016, and this case was referred to the State Office of Administrative Hearings (SOAH) on October 13, 2016. A hearing on the merits took place on June 21, 2017, and the record closed on August 15, 2017. On October 13, 2017, the SOAH ALJ issued a proposal for decision recommending approval of AEP's application, by which the Commission understands the ALJ proposed making certain declarations that the proposed installations conform with existing law and Commission rules and that the batteries were properly classified as distribution assets. The ALJ also proposed additional findings and conclusions in response to issues raised by the Commission in its preliminary order regarding other regulatory provisions.

Parties filed exceptions to the proposal for decision on November 3 and replies to the exceptions on November 17. In response to the exceptions, the ALJ made two corrections, but stated that no other changes were warranted.⁷

The Commission granted the parties' request for oral argument in this case, which was presented at the Commission's January 11, 2018 open meeting.

II. Background

AEP proposed installing batteries in two locations, each designed for a selected problem that could be addressed by a utility-scale battery. One design was to provide a source of electric energy to serve retail customers when AEP's distribution facilities could not deliver electricity to those customers. The other was to provide a source of electric energy to prevent exceedances of

⁷ SOAH ALJ's Correction Letter (Nov. 27, 2017).

the rated capacity of AEP's distribution facilities. Further, AEP proposed to not account for the energy used to charge the battery or the energy discharged from the battery to provide electricity to retail customers.

III. Discussion

The Commission recognizes that energy-storage facilities, whether batteries or other new technologies, may allow electric energy to be provided to the consumers in this state in a more reliable and cost-effective manner. However, the Commission finds that the facts presented in this docket are too limited to properly evaluate the use of energy-storage technologies in the manner proposed by AEP.

Further, this docket confirms that when technology is evolving in a regulated industry, the law often lags behind such evolution. This docket demonstrates that the current regulatory structure is inadequate to address energy-storage devices in the manner presented by AEP in its application.

The laws and rules applicable to the electric industry within ERCOT are based on the proposition, generally, that electricity will be bought and sold. The use of unaccounted-for-energy (UFE) in the manner proposed by AEP in this proceeding raises difficult and troubling issues. Further, the use of UFE in the manner proposed makes any attempt to apply existing rules more difficult. Thus, the parties in this docket engaged in complex arguments to account for the proposed use of UFE in a framework of market rules.

It may be that these two batteries would likely have minimal impacts to the ERCOT market. However, if AEP's approach were approved, it is likely that batteries would proliferate and the impacts on the electric market would be magnified. Moreover, batteries may give benefits to some segments of the electric market, but may also be detrimental to other segments. Given the limited focus of the evidence presented in this docket, the impact upon the wholesale and retail markets in ERCOT cannot be determined; but some parties argue that it could be considerable, even disruptive of the current market. Thus, this proceeding identified a potential for energy-storage devices to disrupt the ERCOT market under the current regulatory framework and therefore the need to develop new rules and procedures.

Further, as presented in the application, these battery solutions would be obtained at a lower cost than traditional distribution solutions. However, the comparative economics presented by AEP of the batteries in these situations was limited and was not fully tested in this docket. A more comprehensive analysis that addresses the benefits and detriments to all market segments is needed.

The existing rules for Commission certification are also brought into question by AEP's proposal. The novel use of energy storage such as proposed in this proceeding demands a re-evaluation of those rules. And even if the use of batteries is found, for some purposes, to be classified as distribution, the novelty of such use may need a fuller review as could be done in a certification proceeding.

The Commission appreciates the potential value of energy-storage technologies to this state and deems that it would be imprudent to make a decision in this proceeding that could limit the most effective use of these technologies in the future. The Commission concedes that AEP's proposal is innovative, but concludes that a contested case proceeding—that necessarily must focus on a single set of designed facts—is not an appropriate forum in which to address the many policy issues surrounding the use of energy-storage devices in the manner proposed by AEP. Nor is it an appropriate forum to amend the existing regulatory framework to provide necessary standards and conditions to allow the appropriate use of energy-storage devices in ERCOT.

Only after facts are fully developed will the Commission be in a position to resolve relevant policy issues and design the appropriate regulatory framework with proper standards. Because such policy questions must be answered before new rules may be put into place, and because new rules are necessary to define the appropriate manner in which energy-storage devices are used before the use of energy-storage devices can move forward, the Commission finds good cause to dismiss this proceeding⁸ and directs Commission Staff to open a project in which the necessary policy issues may be addressed and the appropriate regulatory structure can be developed through a future rulemaking.

⁸ See *Petition of Collin County Commissioners' Court, et al., for Declaratory Order Interpreting P.U.C. Subst. R. 25.184(c)(4) to Include Customer-controlled On-site Energy Storage*, Docket No. 30578, Order of Dismissal at 3 (Aug. 15, 2005), "The Commission finds that there is a lack of factual evidence necessary to make a ruling . . . [and] that a rulemaking is the appropriate type of proceeding to address the issues. . . ."

The Commission recognizes the need to move forward to establish a framework that will allow promising new technologies to cost-effectively address distribution quality issues without interfering with the electric market. The rulemaking should consider issues raised in this case and the potential impact of new technologies on the competitive retail market and the energy-only wholesale market in ERCOT. The rulemaking should specifically address the manner in which to treat the energy consumed by batteries and other new technologies. The Commission will not prejudge issues in this docket; however, the use of UFE in the manner proposed by AEP is questionable. The rulemaking should also address whether certification should be required for energy-storage devices and new technologies. If so, the Commission's certification rule will also need to be amended.

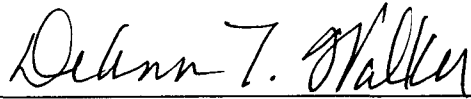
IV. Ordering Paragraphs

Consistent with the discussion above, the Commission issues the following orders:

1. This proceeding is dismissed without prejudice.
2. Commission Staff shall open a rulemaking to address the issues raised by this proceeding and discussed in this order.
3. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 15th day of February 2018.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



BRANDY MARTY MARQUEZ, COMMISSIONER



ARTHUR C. D'ANDREA, COMMISSIONER

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